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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,482	03/31/2004	Toshiharu Furukawa	ROC920030399US1	6082
30206	7590	07/16/2009	EXAMINER	
IBM CORPORATION			GOODWIN, DAVID J	
ROCHESTER IP LAW DEPT. 917				
3605 HIGHWAY 52 NORTH			ART UNIT	PAPER NUMBER
ROCHESTER, MN 55901-7829			2818	
			MAIL DATE	DELIVERY MODE
			07/16/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte:*

TOSHIHARU FURUKAWA, CHARLES WILLIAM KOBURGER, III, and  
JAMES ALBERT SLINKMAN

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Application 10/814,482  
Technology Center 2800

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Mailed: July 16, 2009

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Before SHERRIE SAUNDERS-COBB, *Paralegal Specialist*  
SAUNDERS-COBB, *Paralegal Specialist.*

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on September 11, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

**EXAMINER'S CONSIDERATION OF REPLY BRIEF**

A Reply Brief was filed on December 14, 2007, in response to the Examiner's Answer mailed November 1, 2007.

Title 37, Code of Federal Regulations, §41.43 states:

(a)(1)... the primary examiner must acknowledge receipt and entry of the reply brief. In addition, the primary examiner may withdraw the final rejection and reopen prosecution or may furnish a supplemental examiner's answer responding to any new issue raised in the reply brief.

The Communication mailed February 1, 2008, was an improper acknowledgment of the Reply Brief, as it constitutes a Supplemental Examiner's Answer as per MPEP§ 1208, part II. A Supplemental Examiner's Answers requires a Director or designees approval.

**INFORMATION DISCLOSURE STATEMENT**

Appellants filed Information Disclosure Statements (IDS) dated April 11, 2008. There is no indication on the record that the Examiner has considered the above IDS. MPEP § 609 requires the Examiner to consider any IDS filed by Applicant if timely submitted. A written communication notifying Appellant of the Examiner's consideration of the above IDS is required.

**CONCLUSION**

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) vacate the Communication mailed February 1, 2008;
- 2) generate and mail either:
  - a) a revised Communication properly acknowledging to the Reply Brief dated December 14, 2007 in accordance with MPEP§ 1208, part II.; OR
  - b) issue a Supplemental Examiner's Answer with the required signature (Technology Center Director or designee), if appropriate;
- 3) consider the IDS filed April 11, 2008; and
- 4) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

Ssc

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